



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-82,264-03, -04

EX PARTE MIGUEL ANGEL NAVARRO, Applicant

**ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 08-DCR-050238, 10-DCR-050236
IN THE 240TH DISTRICT COURT
FORT BEND COUNTY**

ALCALA, J., filed a dissenting opinion in which WALKER, J., joined.

DISSENTING OPINION

May a fifteen-year-old child be treated as an adult in the Texas criminal-justice system and sentenced to ninety-nine years in prison under circumstances in which the waiver of the juvenile court's jurisdiction cites no evidence or details in support of its order? This Court's majority opinion today holds that this situation is permissible in the case of Miguel Angel Navarro, applicant, because he did not raise his complaint about the juvenile court's transfer order sooner, and it dismisses his complaint as an unauthorized subsequent habeas application. Rather than dismiss his applications, I would hold that applicant has shown that

there is a new legal basis for his claim that permits substantive review of his subsequent habeas applications, and I would address the merits of his complaint that contends that the substantive standards this Court set forth in *Moon v. State* should be applied retroactively to his case. 451 S.W.3d 28 (Tex. Crim. App. 2014). I, therefore, respectfully dissent.

As the habeas court determined in its findings of fact and conclusions of law in this case, the standards set forth by this Court in *Moon* constitute a new legal basis that was not previously available to applicant until after his original writ application had been filed.¹ In *Moon*, this Court held, among other matters, that the transfer order issued by the juvenile court in the underlying matter was so insufficient as to make it invalid, and thus the district court lacked jurisdiction to render the conviction that had been obtained against Moon, making the judgment void. *Id.* at 51-52. *Moon* expressly determined that the waiver of a juvenile court's jurisdiction required more than check marks on forms or the mere general recitation of the factors set forth in the Texas Family Code. *Id.*; see also TEX. FAM. CODE § 54.02(f).² Rather, in *Moon*, this Court explained that, for the evidence supporting the

¹ Pursuant to Code of Criminal Procedure Article 11.07, a legal basis is “new” for purposes of overcoming the bar on subsequent writs if “the legal basis was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before” the date the applicant filed the previous application. TEX. CODE CRIM. PROC. art. 11.07, § 4(b).

² Texas Family Code Section 54.02(f) states,

In making the determination required by Subsection (a) of this section, the court shall consider, among other matters: (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person; (2) the sophistication and maturity of the child; (3) the record and previous history of the child; and (4) the prospects of adequate protection of the public and the

transfer to be factually and legally sufficient, a juvenile court's transfer order must include specific findings of fact and identify the particularized reasons for the waiver in the written order itself. *Moon*, 451 S.W.3d at 50-51. In support of this conclusion, we cited the provision in the Texas Family Code requiring that the juvenile court “shall state specifically in its order its reasons for waiver and certify its action, including the written order and findings of the court[.]” *Id.* at 49 (quoting TEX. FAM. CODE § 54.02(h)). Examining this language and citing the relevant legislative history, we stated that the statute “obviously contemplates that both the juvenile court's reasons for waiving its jurisdiction and the findings of fact that undergird those reasons should appear in the transfer order.” *Id.* We reasoned that, in order to afford defendants the opportunity for meaningful appellate review of their transfer orders, the juvenile court should “take pains to ‘show its work,’ as it were, by spreading its deliberative process on the record, thereby providing a sure-footed and definite basis from which an appellate court can determine that its decision was in fact appropriately guided by the statutory criteria, principled, and reasonable[.]” *Id.* To hold otherwise, we stated, would force the appellate court to speculate as to the juvenile court's reasons for finding the transfer to be appropriate or the facts the juvenile court found to substantiate those reasons. *Id.* Applying these principles to Moon's case, we concluded that the juvenile court in that case did not “show its work,” and, thus, the evidence was

likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

TEX. FAM. CODE § 54.02(f).

insufficient to support the transfer order. *Id.* at 50. We observed that the only findings stated on the transfer order in Moon’s case were generic and constituted a bare recitation of the statutory factors in Section 54.02(f). *Id.* at 50-51. Given this, we held that the order had failed to make the kind of “case-specific findings of fact” that were required to support the sufficiency of the evidence, and we affirmed the court of appeals’s judgment that had vacated Moon’s conviction and returned his case to juvenile court. *Id.* at 51.

The significance of this Court’s holding in *Moon* is not that a transfer order must be supported by sufficient reasons for the transfer. As the majority opinion observes, that basic principle was in place long before *Moon* was decided. But, *Moon* announced a new rule governing the nature of the sufficiency analysis in this context—in particular, it required that, to be supported by sufficient evidence, a juvenile court’s transfer order must include case-specific facts to support the particularized reasons for the transfer in that case. Moreover, *Moon* indicated that the absence of such specific facts would likely deprive a defendant of the opportunity for meaningful appellate review of the transfer order. Given these aspects of *Moon* that altered the nature of sufficiency review in juvenile transfer cases, I would hold that that case is a new legal basis for applicant’s complaint that the trial court lacked jurisdiction in his case, and, therefore, that this Court may properly consider the underlying merits of that complaint in the instant subsequent habeas applications.

I disagree with this Court’s majority opinion that determines that the underlying theory supporting *Moon* was reasonably available to applicant when he filed his initial habeas

application, given the Supreme Court’s holding in *Kent v. United States* that juvenile-transfer orders must include a statement of the reasons or considerations for waiving exclusive jurisdiction. 383 U.S. 541, 86 S. Ct. 1045 (1966). Applicant contends that *Kent*’s sufficiency requirement for juvenile-transfer orders did not impose the “show your work” requirement that this Court required in *Moon*, and I agree with that suggestion. In *Kent*, the Supreme Court concluded that, “as a condition to a valid waiver order, [the juvenile] was entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court’s decision.” *Id.* at 557. The Court further stated,

Meaningful review requires that the reviewing court should review. It should not be remitted to assumptions. It must have before it a statement of the reasons motivating the waiver including, of course, a statement of the relevant facts. It may not ‘assume’ that there are adequate reasons, nor may it merely assume that ‘full investigation’ has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor. We do not read the statute as requiring that this statement must be formal or that it should necessarily include conventional findings of fact. But the statement should be sufficient to demonstrate that the statutory requirement of ‘full investigation’ has been met; and that the question has received the careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review.

Id. at 561.

The difference between *Kent* and *Moon* was that in *Kent*, the juvenile court waived jurisdiction based only on the statement that a “full investigation” had been conducted, whereas in *Moon*, the juvenile court did actually explain the basis for its waiver of exclusive

jurisdiction, but it did so with a form order that corresponded with the generic reasons set forth in the Family Code.³ Although *Kent* referred to the requirement of a juvenile court providing specific reasons in support of its transfer order, that case wavered on whether formal findings of fact were required, it did not define the level of specificity that would be required of such findings, and it did not expressly state that case-specific findings must be included in the transfer order itself. *Moon* thus constituted a significant expansion of *Kent* by disallowing form orders and by requiring case-specific fact findings to support a transfer order. It is true that *Moon* was formulated from the Supreme Court's decision in *Kent*, but it does not necessarily follow that this applicant could have reasonably formulated his complaint from the *Kent* decision. *Moon* was decided by this Court with a vote of six to three, and thus, it was not so clear-cut that Moon's complaint about the lack of specific facts would be sustained. As the dissenting opinion in *Moon* argued, "For almost forty years, the tendency among the courts of appeals has been to hold that a juvenile transfer order need not specify in detail the facts supporting the order." *Moon*, 451 S.W.3d at 52 (Keller, P.J., dissenting). The dissenting opinion called the lower court's decision in *Moon* "unconventional." *Id.* at 53. The dissenting opinion argued that *Kent* did not require specific fact findings to support a transfer order. Given that the law was apparently unsettled following *Kent* with respect to the information that must be included in a transfer order, I agree with applicant's assertion that *Moon* broke new ground in this area and that he should

³ See TEX. FAM. CODE § 54.02(f).

be permitted to now rely on that decision as a new legal basis for seeking habeas relief.

In sum, I would not hold, as this Court's majority opinion does, that applicant could have reasonably formulated his complaint regarding the deficient transfer order in this case based on the Supreme Court's opinion in *Kent*, without the benefit of this Court's more recent decision in *Moon*. I would hold that *Moon* satisfies the new-legal-theory requirement for subsequent habeas applications, and I would address the substantive arguments applicant presents regarding whether *Moon* should be retroactively applied to his case. Because this Court dismisses these applications as procedurally barred without considering the merits of applicant's complaint, I respectfully dissent.⁴

Filed: January 10, 2018
Publish

⁴ Given my view that applicant has satisfied the new-legal-basis requirement for overcoming the bar on subsequent writs, I need not address his argument, based on my dissenting opinion in *Ex parte Sledge*, that he has also satisfied the innocence-gateway exception to the Section 4 bar. See *Ex parte Sledge*, 391 S.W.3d 104, 112 (Tex. Crim. App. 2013) (Alcala, J., dissenting); TEX. CODE CRIM. PROC. art. 11.07, § 4(a)(1), (a)(2).